

**DECISION**

WEISKOPF  
27407  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-214000

**DATE:** February 13, 1984

**MATTER OF:** John Turner Detective Agency

**DIGEST:**

Prime operating contractor properly did not give a preference to minority business for a guard services subcontract where the solicitation did not set aside the acquisition for such businesses.

John Turner Detective Agency protests the acquisition of guard services at two Pittsburgh, Pennsylvania Job Corps Center sites. The sites are operated by Teledyne Economic Development Co., which solicited the guard services under a cost reimbursement contract with the Department of Labor. The protester alleges that the acquisition was set aside for minority business enterprises and complains that Teledyne failed to award the subject subcontract to such an enterprise.

We summarily deny the protest.

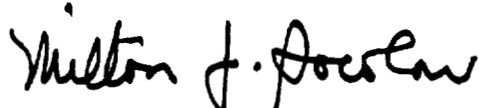
Preliminarily, we point out that while we generally do not consider protests against subcontract awards, we do consider them where the prime contractor is operating and/or managing a government-owned facility. Johnson Controls, Inc., B-206119, September 22, 1983, 83-2 CPD 358. We assume for the purpose of this protest this is that type of situation.

We have obtained a copy of Teledyne's solicitation for the guard services, and we find nothing in it purporting to set aside the acquisition for minority businesses. It is a fundamental precept of federal procurement law, which must be followed by prime operating contractors, that a contract must be awarded on the same basis offers are solicited. See Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. Since the solicitation did not set aside the acquisition for minority businesses, the prime contractor had no legal basis for giving preferential treatment to such enterprises in the selection and award process. See

Arrowpointe Corporation, B-203279, April 27, 1982, 82-1 CPD 386; Piasecki Aircraft Corporation, supra.

The protester also alleges that Teledyne's prime contract nevertheless requires that guard services be acquired from minority business enterprises. To the extent this is a complaint that the competition the protester entered thus should have been set aside, it is untimely under our Bid Protest Procedures, which require that a protest of an alleged solicitation impropriety apparent prior to bid opening or the closing date for receipt of proposals be filed before bid opening or the closing date. 4 C.F.R. § 21.2(b)(1) (1983). In this case, the protester did not file its protest until after the award. In any event, the Department of Labor has informally advised us that the prime contract only contained standard language requiring Teledyne to maintain a minority business subcontracting plan with an aim towards meeting certain minority hiring goals expressed as a percentage of the total value of all subcontracting. The contract did not require that any particular subcontract be awarded to a minority business concern.

The protest is summarily denied.

  
for Comptroller General  
of the United States